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NO. DIST. OF CA. S.J.

MAY 23 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOREEN SALINAS

Plaintiff,

vs.

CITY OF SAN JOSE, CHIEF ROBERT
DAVIS, TASER INTERNATIONAL, INC.
and DOES 1 to 10, inclusive

Defendants.

CASE NO. 008 02625

COMPLAINT FOR DAMAGES:

1. Violations of 42 U.S.C. § 1983
2. Municipal Liability for Constitutional Violations (42 U.S.C. § 1983)
3. Supervisory Liability for Constitutional Violations (42 U.S.C. § 1983)
4. Wrongful Death (C.C.P. § 377.60)
5. Survival Action (C.C.P. § 377.30)
6. Negligent Hiring, Supervision and Retention
7. Battery
8. Negligence
9. Conspiracy
10. Products liability

DEMAND FOR JURY TRIAL

BY FAX

Plaintiff NOREEN SALINAS alleges as follows:

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VENUE AND JURISDICTION

1
2 1. Venue is proper in this District because the underlying acts, omissions, injuries
3 and related facts and circumstances giving rise to the present action occurred in this District.

4
5 2. This Court has jurisdiction over plaintiff's federal claims under 42 U.S.C. § 1983
6 pursuant to 28 U.S.C. §§ 1331 and 1343. Plaintiff further invokes pendent jurisdiction of this
7 Court to consider the claims arising under state law.
8

9
10 **PARTIES**

11 3. Plaintiff NOREEN SALINAS is the daughter of the decedent. Plaintiff brings
12 this action individually and as heir and successor in interest to decedent's estate. The plaintiff
13 is claiming violations of her constitutional rights and the decedent's constitutional rights. The
14 plaintiff is also suing for the intentional interference with her familial relationship with her
15 father. The plaintiff is seeking both wrongful death damages and survival damages.
16

17
18 4. At all times mentioned herein, decedent STEVE SALINAS (or "decedent") was
19 a resident of the City of San Jose, County of San Jose, State of California.

20
21 5. At all times mentioned herein, plaintiff NOREEN SALINAS resided in the
22 County of San Jose, State of California.

23 6. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, defendants, and each of them, were and now are residents of the County of San
25 Jose, State of California.
26

27 7. At all times herein mentioned, defendant, CITY OF SAN JOSE (hereinafter
28 "CITY") is and was at all relevant times mentioned herein, a municipality duly organized and

1 existing under the laws of the State of California. The San Jose Police Department
2 (hereinafter "S.J.P.D.") is an official subdivision of defendant CITY, and all officers
3 employed by said department are employees of defendant CITY.
4

5 8. Defendant CITY was at all times mentioned herein, engaged in owning,
6 operating, maintaining, managing and doing business as a Police Department in the City of
7 San Jose, State of California. All of the acts complained of herein by plaintiff against
8 defendants were done and performed by said defendants by and through its authorized agents,
9 servants and/or employees, and each of them, all of whom at all relevant times herein were
10 acting within the course, purpose and scope of said agency, service and/or employment
11 capacity and under color of law. Moreover, defendants and its agents ratified all of the acts
12 complained of herein.
13
14

15 9. The true names and capacities, whether individual, corporate, association or
16 otherwise of defendants DOES 1 through 10, inclusive, are unknown to plaintiff who
17 otherwise sues these defendants by such fictitious names. Each defendant is sued individually
18 and/or in his/her official capacity as defined in the present complaint. Plaintiff will seek leave
19 to amend this complaint to show the true names and capacities of these defendants when they
20 have been ascertained. Each of the fictitiously named defendants is responsible in some
21 manner for the conduct or liabilities alleged herein.
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24

25 10. All defendants who are natural persons, and each of them, including DOES 1
26 through 10, are sued individually and in their official capacity as officers, sergeants, captains,
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1 commanders, supervisors and/or civilian employees, agents, policy makers, and
2 representatives for the S.J.P.D., a department and subdivision of defendant CITY.

3
4 11. Defendant CHIEF ROBERT DAVIS (hereinafter "DAVIS") was at all relevant
5 times herein the Chief of the S.J.P.D., and he, along with other officials of CITY and DOES
6 1-4, at all times possessed the power and the authority and were charged by law with the
7 responsibility to enact policies and to prescribe rules and practices concerning the operation
8 of the S.J.P.D. and/or were supervisors of the defendant-officers.

9
10 12. Defendants DOES 5-10, are officers, sergeants, lieutenants, who were at the time
11 of committing the acts alleged hereinafter, duly authorized employees of defendant CITY, who
12 were acting within the course and scope of their respective duties and with the complete
13 authority and ratification of defendant CITY. At all relevant times herein, said defendants, and
14 each of them, were acting under color of law, to wit: under the color of the statutes,
15 ordinances, regulations, policies, customs and usages of defendant CITY and the State of
16 California.

17
18
19 13. At all times herein mentioned, all defendants, named and unnamed, were and are
20 duly appointed officers, agents, and/or employees of defendant CITY.

21
22 14. At all times herein, each and every defendant was the agent of each and every
23 other defendant and had the legal duty to oversee and supervise the hiring, conduct,
24 employment, and discipline of each and every defendant named and unnamed in this
25 complaint.
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1 justification, all demonstrating a deliberate indifference to the health and well being of the
2 decedent.

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4 20. The excessive and unlawful use of force against the decedent resulted in severe
5 injuries and death, including but not limited to, taser darts in the back and left buttock,
6 abrasions and contusions to the head, neck, thorax, abdomen, upper extremities, and lower
7 extremities, and several sharp force injures.
8

9 21. Decedent was tasered and had excessive force used against him when he was
10 without clothing and when he was not resisting the officers. The decedent did not strike or
11 attempt to strike the officers at any time. The repeated tasering and other force used against
12 the decedent was unreasonable and excessive under the circumstances, demonstrating a
13 deliberate indifference which shocks the conscience and caused the death of the decedent.
14

15 22. Decedent sustained serious injuries and subsequent death consistent with the
16 application of the excessive force and the taser applications. Additionally, the involved
17 officers did not timely summon medical aid for the decedent
18

19 23. As a result of the foregoing, decedent suffered intense physical and emotional pain,
20 anguish, distress and despair before his death and was deprived of his rights under the Fourth
21 and Fourteenth Amendments of the United States Constitution. The excessive force used
22 against the decedent was also a cause of death. The plaintiff was also deprived of her right to
23 a continued familial relationship with the decedent.
24
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FIRST CAUSE OF ACTION

VIOLATIONS OF 42 U.S.C §1983

(Against Defendant Officers DOES 5-10)

24. Plaintiff hereby incorporates by reference paragraphs 1 through 23 herein, as if set forth in full.

25. This complaint sets forth claims for deprivation of civil rights for violation of the Fourth and Fourteenth Amendments to the United States Constitution against defendants DOES 5-10 pursuant to 42 U.S.C. §1983. These claims are brought by plaintiff NOREEN SALINAS in her representative capacity as heir and successor in interest of decedent STEVE SALINAS and in her individual capacity as the daughter of the decedent. The plaintiff is claiming violation of her constitutional rights and violations of the decedent's constitutional rights.

26. The § 1983 successor in interest claims against defendants DOES 5-10, inclusive, is based upon plaintiff's allegations that defendants' acts and omissions on May 25, 2007, as alleged herein were excessive, unreasonable and deliberately indifferent to the life and liberty of STEVE SALINAS and were a direct and legal cause of his death when the said defendants used excessive force, including deadly force, against the decedent STEVE SALINAS in violation of decedent's Fourth Amendment rights. The excessive force included, but was not limited to, the excessive and repeated use of the taser on the decedent.

27. Plaintiff further asserts individual claims against defendants DOES 5-10 pursuant to 42 U.S.C. § 1983 on the grounds that the unreasonable, reckless, intentional and deliberate

1 acts and omissions of all defendants as set forth herein were a direct and legal cause of the
2 deprivation of plaintiff's constitutionally protected right under the Fourteenth Amendment to
3 the companionship and society of decedent STEVE SALINAS. Plaintiff has a cognizable
4 interest under the due process clause of the Fourteenth Amendment to be free from
5 unwarranted state interference in her familial relationship with STEVE SALINAS.
6

7
8 28. Plaintiff is informed and believe and thereon alleges that the aforementioned acts of
9 defendants were willful, malicious, intentional, oppressive, reckless and/or were done in
10 willful and conscious disregard of the rights, welfare and safety of the decedent and the
11 plaintiff, thereby justifying the awarding of punitive and exemplary damages against the
12 individually named defendants in an amount to be determined at time of trial.
13

14 29. As a direct and legal result of the acts and omissions of defendants, plaintiff has
15 suffered damages, including, without limitation, loss of the love, affection, comfort, society
16 and companionship of her father STEVE SALINAS, attorney's fees, costs of suit, and other
17 pecuniary losses not yet ascertained and in an amount to be proven at time of trial. Plaintiff is
18 seeking both survival damages and wrongful death damages under this cause of action.
19
20

21 **SECOND CAUSE OF ACTION**

22 **MUNICIPALITY LIABILITY FOR CONSTITUTIONAL VIOLATIONS**

23 **(42 U.S.C. §1983)**

24 **(Against Defendant CITY and CHIEF ROBERT DAVIS)**

25
26 30. Plaintiffs incorporates by reference paragraphs 1 through 29 herein, as if set forth
27 in full.
28

1 31. Plaintiff is a surviving heir and successor in interest of the decedent. This action is
2 brought pursuant to 42 U.S.C. §1983, and the Fourth and Fourteenth Amendments of the
3 United States Constitution.
4

5 32. On May 25, 2007, defendants DOES 5-10, and each of them, violated decedent's
6 constitutional rights by using excessive force against him when said defendants unlawfully,
7 unreasonably caused grievous harm and death to STEVE SALINAS and otherwise facilitated,
8 instigated and encouraged the violent acts resulting in his death as set forth in detail in
9 plaintiff's factual allegations.
10

11 33. At all times relevant herein defendant-officers, sergeants, lieutenants, and
12 commanders, including DOE defendants, were agents and employees of defendant CITY and
13 in carrying out the acts alleged herein were acting under color of their authority as such, and
14 under color of the statutes, regulations, customs, and usages of the CITY and the S.J.P.D.,
15 pursuant to a set pattern, practice, and official policy of defendant CITY.
16

17 34. At the time of the violence inflicted on decedent by said defendant-officers,
18 defendant CITY had in place, and had ratified, policies, procedures, customs and practices
19 which permitted and encouraged their police officers to unjustifiably, unreasonably and in
20 violation of the Fourth and Fourteenth Amendments, use violence against individuals being
21 detained, specifically Latinos, African-Americans and members of other minority groups.
22 Said policies, procedures, customs and practices also called for defendant CITY not to
23 discipline, prosecute or in any way take corrective or responsive action to known incidents
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1 and/or complaints of unjustified shootings and violent acts by said officers or the related
2 claims and lawsuits resulting from such violence.

3
4 35. Said policies, procedures, customs and practices called for the refusal of defendant
5 CITY to investigate or document complaints of previous incidents of unjustified use of force
6 and violence and, instead, officially claim that such incidents were justified and proper.

7
8 36. Defendant CITY'S policies, procedures, customs and practices of inaction
9 and cover-up encouraged officers of S.J.P.D., including the defendants named herein, to
10 believe that unjustified violence and excessive use of force against individuals targeted for
11 detention was permissible, in particular against individuals of minority groups.

12
13 37. Said policies, procedures, customs and practices of defendant CITY evidenced a
14 deliberate indifference to the violations of the constitutional rights of decedent. This
15 indifference was manifested by the failure to change, correct, revoke, or rescind these policies,
16 procedures, customs and practices in light of prior knowledge by defendants and their
17 policymakers of indistinguishably similar incidents of unjustified and unreasonable force,
18 including the use of restraint techniques that posed an unreasonable risk of death.

19
20
21 38. Deliberate indifference to the civil rights of minority groups and other victims of
22 excessive force is also evidenced by defendant CITY ignoring the history and pattern of prior
23 civil lawsuits alleging civil rights violations and the related payment of judgments to such
24 individuals for conduct similar to the conduct alleged herein.

25
26 39. Deliberate indifference is also evidenced by defendant CITY having maintained an
27 inadequate system of "use of force reports" which have failed and continue to fail to identify
28

1 instances of excessive force and the unlawful use of dangerous restraint techniques by
2 S.J.P.D., including defendants, upon individuals who are detained and targeted for detention as
3 well as defendant's failure to more closely supervise or retrain officers who improperly use
4 excessive force and/or deadly force that pose an unreasonable risk of death.
5

6 40. Other systemic deficiencies which have indicated and continue to indicate a
7 deliberate indifference by defendant CITY to the violations of the civil rights of individuals
8 such as decedent include the following:
9

- 10 a. preparation of investigative reports designed to vindicate the use of force,
11 regardless of whether such force was justified;
12
- 13 b. preparation of investigative reports which rely solely on the word of involved
14 officers and systematically fail to credit testimony of non-officer witnesses;
15
- 16 c. preparation of investigative reports which omit factual information and
17 physical evidence that contradicts the accounts of the officers involved in the
18 unjustified use of force;
19
- 20 d. issuance of public statements exonerating officers involved in such incidents
21 prior to the completion of investigation of the use of force;
22
- 23 e. failure to review investigative reports by supervisory officers for accuracy or
24 completeness and acceptance of conclusions that are unwarranted by the
25 physical evidence;
26
27
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1 f. acquiescence and/or a tacit agreement to a "code of silence" that permeates
2 all levels of the chain of command within the S.J.P.D. and serves to insulate
3 and protect officers who engage in excessive force, including deadly force.
4

5 41. Defendant CITY also maintained a system of grossly inadequate training pertaining
6 to the use of force in detaining individuals and failing to train in the proper use of force,
7 including deadly force, and training with respect to the use of taser, in that said training fails to
8 meet standard police training principles and criteria which mandate the use of established
9 customs, procedures, and guidelines to prevent the pattern of abuse complained of in previous
10 lawsuits, claims and citizen complaints against said defendants.
11

12 42. The foregoing acts, omissions, and systemic deficiencies are policies and customs
13 of defendant CITY have caused defendant's officers to believe that the use of excessive force
14 is permissible, and that use of force is a matter entirely within the discretion of the officers.
15 Moreover, that improper use of deadly force would not be honestly and properly investigated,
16 all with the foreseeable result that defendant officers would use force, including deadly force,
17 in situations where such force is neither necessary, reasonable, nor legal.
18

19 43. As the result of the aforementioned acts, omissions, systematic deficiencies,
20 policies, procedures, customs and practices of defendant CITY, defendants and DOES 5
21 through 10 either inflicted severe injuries to decedent resulting in his death or otherwise
22 caused and/or facilitated the acts of violence against him that caused his death.
23

24 44. As a direct and proximate result of the aforementioned policies, procedures,
25 customs, and practices of defendant CITY, plaintiff's deceased father suffered intense physical
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1 and emotional pain, anguish, distress and despair before his death and was deprived of his
2 rights under the Fourth and Fourteenth Amendments to the United States Constitution.

3
4 45. As a direct and proximate result of the aforementioned policies, procedures,
5 customs, and practices of defendant CITY, plaintiff's deceased father suffered injuries and
6 death as a result of the unjustified use of force by defendant-officers as outlined in the Factual
7 Allegations.

8
9 46. By reason of the aforementioned acts and omissions of defendant CITY, plaintiff
10 was required to retain counsel to institute and prosecute the within action, and plaintiff
11 requests payment by defendants of a reasonable sum for attorneys fees pursuant to 42 U.S.C.
12 §1988.
13

14 **THIRD CAUSE OF ACTION**

15 **SUPERVISORIAL LIABILITY FOR CONSTITUTIONAL VIOLATIONS**

16 **ARISING FROM THE USE OF EXCESSIVE FORCE (42 U.S.C. §1983)**

17 (Against Defendant CITY, CHIEF ROBERT DAVIS and DOES 1 to 4)

18
19 47. Plaintiff incorporates by reference paragraphs 1 through 46 herein, as if set forth in
20 full.

21
22 48. This cause of action is brought pursuant to 42 U.S.C. §1983 for violation of
23 decedent's rights and plaintiff's rights under the Fourth and Fourteenth Amendments to the
24 U.S. Constitution.

25
26 49. Defendants CITY, DAVIS, as well as DOES 1-4, inclusive, failed to adequately
27 train, supervise, discipline or in any other way control all of the individually named defendant-
28

1 officers and DOES 5-10, inclusive, in the exercise of their duties as officers, sergeants,
2 commanders, and/or supervisors.

3
4 50. Defendants CITY, DAVIS, as well as DOES 1-4, knowingly and deliberately
5 fostered, maintained and condoned a policy, practice and custom or otherwise acted in a
6 manner that was deliberately indifferent to the lives and liberty of persons such as STEVE
7 SALINAS and that such policy, practice, custom and/or actions were a direct and legal cause
8 of his death. The policy, practice, custom, and actions included, without limitation, knowingly
9 and deliberately failing to properly train, discipline and supervise employees regarding both
10 the use of force, including the proper application of restraint techniques and choke holds, the
11 use of tasers and the proper procedures to be followed in detaining individuals.
12

13
14 51. Moreover, defendants CITY, DAVIS and DOES 1-4, inclusive, learned and
15 became aware of the excessive force used against decedent STEVE SALINAS and tolerated,
16 encouraged and condoned this misconduct by consciously ignoring, turning a blind eye and
17 overlooking the misconduct.
18

19 52. By consciously and deliberately overlooking the acts of misconduct by their
20 subordinate officers, including defendants DOES 1-4, inclusive, established a custom and
21 practice of condoning and ratifying such misconduct, and established a tolerated pattern of
22 constitutional violations amongst their subordinate officers. The condoning of misconduct by
23 defendants CITY, DAVIS, and DOES 1-4, inclusive, was so comprehensive and well-known
24 that their subordinate officers were emboldened to blatantly violate the constitutional rights of
25 persons such as decedent STEVE SALINAS.
26
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1 53. Defendants CITY, DAVIS and DOES 1-4, through their custom and practice of
2 encouraging, condoning, tolerating and ratifying constitutional violations by their subordinate
3 officers, including defendants and DOES 1-4, were deliberately indifferent to the
4 constitutional violations being committed by their subordinates, including said subordinate
5 defendants.
6

7 54. Based on the custom and practice of condoning, tolerating, and ratifying
8 constitutional violations and a failure to adequately train and discipline subordinate S.J.P.D.
9 officers who committed constitutional violations, such as defendants DOES 1-4, inclusive, are
10 liable for constitutional violations committed by the said defendants for the damages suffered
11 by plaintiff as set forth herein.
12

13 55. The aforementioned acts of the individual defendants DAVIS and DOES 1-4,
14 inclusive, were willful, wanton, malicious and oppressive thereby justifying the awarding of
15 exemplary and punitive damages as to these defendants. Plaintiff is seeking both survival
16 damages and wrongful death damages under this cause of action.
17

18
19 **FOURTH CAUSE OF ACTION**

20 **WRONGFUL DEATH (CALIFORNIA CIVIL PROCEDURE §377.60)**
21 **(Against All Defendants)**
22

23 56. Plaintiff incorporates by reference paragraphs 1 through 55 herein, as if set forth in
24 full.

25 57. As the surviving heir and successors in interest of STEVE SALINAS, plaintiff
26 asserts a wrongful death action against all defendants pursuant to §377.60 et. seq. of the
27 California Code of Civil Procedure. Said claim is based upon the negligent, reckless and
28

1 wrongful acts and omissions of defendants, as alleged herein, were a direct and legal cause of
2 death of STEVE SALINAS and the resulting damage and death to plaintiff. The wrongful
3 death claims are based on violations of constitutional rights, battery, negligence, and products
4 liability.
5

6 58. Plaintiff is informed and believes and thereon alleges that the aforementioned acts
7 of defendants were willful, malicious, intentional, oppressive, reckless and/or were done in
8 willful and conscious disregard of the rights, welfare and safety of plaintiff, thereby justifying
9 the awarding of punitive and exemplary damages against the individually named defendants in
10 an amount to be determined at time of trial. The wrongful death claims are based on the
11 Federal Civil Rights violations as well as the violations of state law battery, negligence, false
12 arrest, and product liability.
13
14

15 **FIFTH CAUSE OF ACTION**

16 **SURVIVAL ACTION**

17 **(California Code of Civil Procedure Section 377.30)**
18 **(Against All Defendants)**
19

20 59. Plaintiff hereby incorporates by this reference paragraph 1 through 58 of this
21 complaint as though fully set forth herein.
22

23 60. This cause of action is brought pursuant to California Code of Civil Procedure
24 §377.34.
25

26 61. As a proximate result of the wrongful conduct of defendants as alleged, decedent
27 suffered intense physical and emotional pain, anguish, distress, despair and suffering all during
28 the time of the violent acts by defendants all until the moment of his death at the hands of said

1 defendants as well as property and pecuniary loss. The plaintiff is requesting survival
2 damages for violations of both Federal and State law. The survival claims are based on the
3 claims of constitutional violations, battery, negligence, and products liability.
4

5
6 **SIXTH CAUSE OF ACTION**

7 **NEGLIGENT SUPERVISION**

8 (Against Chief Davis and DOES 1-4)

9
10 62. Plaintiff hereby incorporates by reference paragraphs 1 through 61 of this
11 complaint as though fully set forth herein.

12 63. Plaintiff is informed and believes and thereon alleges that when STEVE SALINAS
13 was contacted by the S.J.P.D., defendants herein, and each of them, assumed a duty of care
14 towards Mr. SALINAS in which they were required to use reasonable force in detaining him
15 and/or taking him into custody.
16

17 64. This cause of action asserts a claim for negligence against all defendants based on
18 plaintiff's allegations that all defendants owed a duty of care to the decedent, that defendants
19 breached that duty of care by killing STEVE SALINAS even though Mr. SALINAS was
20 neither a threat to their safety nor to the safety of others.
21

22 65. Plaintiff is informed and believes and thereon alleges that defendant CITY,
23 DAVIS, and DOES 1 to 4, inclusive, and other supervisors negligently hired, retained,
24 supervised, trained, assigned and failed to discipline the employees involved in this incident.
25 Plaintiff alleges that defendants' negligence was a direct and legal cause of the death of
26 STEVE SALINAS.
27
28

67. As a direct and legal result of the acts and omissions of defendants, plaintiff has suffered damages, including, without limitation, loss of the love, affection, comfort, society and companionship of her father STEVE SALINAS, emotional distress, pain and suffering, medical expenses, attorney's fees, costs of suit, and other pecuniary losses not yet ascertained and in an amount to be proven at time of trial. Plaintiff is seeking wrongful death damages and survival damages under this cause of action.

BATTERY

(Against Defendants CITY, and DOES 5 to 10, inclusive)

68. Plaintiff repeats and realleges each and every allegation of paragraphs 1 to 67 as though fully set forth herein.

69. Plaintiffs assert claims of battery against these defendants based upon the unlawful touching of decedent which was the direct and legal cause of his injuries and death and the resulting damages and loss to plaintiff. At all times during the unlawful touching of decedent, defendants were acting within the course and scope of their employment with

1 defendant CITY. Defendant CITY is thus vicariously liable for the acts of the individually
2 named defendants who committed the battery upon decedent pursuant to Government Code
3 Sections 815.2 (a) and 820 (a). The unconsented contact by the involved officers against the
4 decedent amounted to unreasonable force and included, but was not limited to, punches, kicks,
5 control holds, improper restraints and the improper and excessive use of the taser on the
6 decedent.
7

8
9 70. Plaintiff is informed and believes and thereon alleges that the aforementioned acts
10 of these individual defendants were willful, malicious, intentional, oppressive, reckless and/or
11 were done in willful and conscious disregard of the rights, welfare and safety of decedent and
12 plaintiff, thereby justifying the awarding of punitive and exemplary damages in an amount to
13 be determined at time of trial.
14

15 71. The battery included the restraints and the repeated applications of the taser.
16

17 72. As a direct and legal cause of the acts and omissions of these defendants, and each of
18 them, decedent and plaintiff has suffered damages, including without limitation, loss of
19 earnings, loss of enjoyment of life, pain and suffering, emotional distress, attorneys' fees,
20 costs of suit, and other pecuniary losses not yet ascertained. Plaintiff is seeking wrongful
21 death damages and survival damages under the battery cause of action.
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EIGHTH CAUSE OF ACTION

NEGLIGENCE

(Against all Defendants)

73. Plaintiff repeats and realleges each and every allegation of paragraphs 1 to 72 as though fully set forth herein.

74. At all times alleged defendant, and each of them acted negligently and recklessly concerning the matter in which STEVE SALINAS was treated by the defendants. The negligent actions and inactions of the defendants included but are not limited to:

- (a) the failure to properly and adequately assess the need to use force or deadly force, including the use of taser;
- (b) the failure to monitor and record any use of force by the City of San Jose Police Officers, including DOES 5-10.
- (c) the failure to monitor and record any injuries specifically caused by the use of force by the City of San Jose Police Officers, including DOES 5-10 .
- (d) the negligent tactics and handling of the situation with the decedent STEVE SALINAS, including the inappropriate use of the taser.
- (e) the negligent use of force including deadly force against the decedent STEVE SALINAS, including the negligent use of the taser on the decedent.
- (f) the failure to properly train and supervise employees, both professional and non-professional, including DOES 5-10.

///

1 (g) the failure to provide prompt medical care to the decedent after he lost
2 consciousness.

3
4 75. As a direct and proximate result of defendants' conduct as alleged above, and other
5 undiscovered negligent conduct STEVE SALINAS was caused to suffer severe pain and
6 suffering from personal injuries received during a brutal unwarranted attack by the defendants
7 and untimely died as a result of the unnecessary use of force, including the excessive use of
8 the taser. Plaintiff is claiming both wrongful death damages and survival damages under the
9 negligence cause of action.
10

11 **NINTH CAUSE OF ACTION**

12
13 **CONSPIRACY**

14 (Against Defendants DOES 1 to 10, inclusive)

15
16 76. Plaintiff repeats and realleges each and every allegation of paragraphs 1 to 75 as
17 though fully set forth herein.

18
19 77. This action arises under the Civil Rights Act of 1871 (42 USC Section 1983, and
20 1985) as later more fully appears, and the Fourth and Fourteenth Amendments to the United
21 States Constitution. This court has jurisdiction under 28 USC Section 1331 and 1343.

22
23 78. Plaintiff is informed, believes and alleges that in doing the things alleged, defendants,
24 and each of them, acted under color of statute, regulations, customs and usages of the CITY
25 and pursuant to the official policy of defendants, Chief Robert Davis, and DOES 1-4, and that
26 the defendants, and each of them, assisted, cooperated, coordinated and acted in concert with
27 each of the other defendants.
28

1 79. During the course of this incident, Defendant DOES 1 thru 10 and each of them,
2 conspired to and in fact did deprive DECEDENT of life and liberty as would shock the
3 conscience in violation of Decedent's rights to same and guaranteed by the Fourth (4th), and
4 Fourteenth (14th) Amendments to the United States Constitution. Defendants ad each of them
5 also deprived Decedent of the right not to be deprived of life and liberty without due process
6 of law as guaranteed by the Fourth, and Fourteenth Amendments of the United States
7 Constitution. All of rights of decedent, as set forth, were violated by defendants and each of
8 them by the use of brutal, excessive, unreasonable and unnecessary physical force upon the
9 person of Decedent, as more specifically set forth.
10

11 80. The plaintiff further alleges that the conduct of the defendants which forms the basis
12 of this lawsuit is part of a larger policy, patter and practice of the City of San Jose to, under the
13 color of law, deprive a certain segment of the populace, namely Latino males, of their
14 inalienable rights by committing, condoning, ratifying, approving, and otherwise tacitly
15 approving the violation of civil rights to this segment of the populace.
16

17 81. The plaintiff further contends the defendants failed to prevent this unlawful conduct
18 due to inadequate training, supervision, and lack of disciplinary procedures to prevent the acts
19 of racial profiling, acts of excessive force, violence upon persons assaults and batteries,
20 intimidation illegal searches and seizures, falsification of evidence, breach of duty imposed by
21 government Code Section 118.1, perjury, malicious prosecution, negligent retention of officers
22 who engage in the aforementioned conduct and by maintaining and perpetrating a "code of
23

1 silence” by officers, supervisors or policy makers from disclosing, preventing and otherwise
2 actively covering up said unlawful conduct.

3
4 82. As a proximate result of the conduct of defendants, and each of them, as set forth, the
5 Decedent suffered mental, physical, and emotional pain and suffering resulting in his death
6 and was deprived of his constitutional rights of life, liberty and due process, as to decedent’s
7 damages.

8
9 83. The conduct of defendants, DOES 5-10 was willful, wanton, malicious and one with
10 an evil motive and intent and a reckless disregard for the rights and safety of the Decedent and
11 therefore warrants the imposition of exemplary and punitive damages.
12

13 **TENTH CAUSE OF ACTION**

14 **PRODUCT LIABILITY**

15 (Against TASER INTERNATIONAL, INC. only)

16
17 84. Plaintiff repeats and realleges each and every allegation of paragraphs 1 to 83 as
18 though fully set forth herein.
19

20 85. Defendants TASER INTERNATIONAL, INC., placed the taser on the market in the
21 ordinary course of business.

22 86. Defendants TASER INTERNATIONAL, INC., knew that the taser was to be used
23 without inspection for defects.
24

25 87. Defendant TASER INTERNATIONAL, INC., knew that the taser was defective
26 particularly in that it was unsafe for persons with epilepsy and other physical conditions, and
27 failed to adequately warn of such danger.
28

1 88. The taser used on STEVE SALINAS was defective as alleged herein.

2 89. As a direct and proximate result of said defect, STEVE SALINAS died and plaintiff
3 has been injured and damaged as alleged herein.
4

5 90. Defendant TASER INTERNATIONAL, INC., knew that the taser was capable of
6 causing serious injury and death, but failed to warn with respect to this risk.
7

8 91. Defendant TASER INTERNATIONAL, INC., knew that that he taser repeated
9 applications of could cause serious injury or death, but failed to warn with respect to the risk
10 of the taser causing serious injury or death.
11

12 92. Defendant TASER INTERNATIONAL, INC., failed to warn of this danger and
13 specifically marked their taser by explicitly and implicitly warranting that the application of
14 their taser could not cause serious injury or death, when in fact they knew or should have
15 known that application of the taser could cause serious injury and the death of an individual.
16

17 ///

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19 ///
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1 **WHEREFORE**, Plaintiff prays for judgment against defendants, and each of them,
2 jointly and severally as follows:

- 3
- 4 1. For general damages of \$20 million dollars, including wrongful death damages;
 - 5 2. For special damages according to proof;
 - 6 3. For decedent's pain and suffering according to proof;
 - 7 4. Exemplary damages, but only against each of the individual defendant, according to
 - 8 proof;
 - 9 5. Reasonable attorney's fees and cost of suit pursuant to 42 U.S.C. §1988;
 - 10 6. Pre-judgment interest;
 - 11 7. For costs incurred herein, and for further relief as the Court may deem just and
 - 12 proper.
 - 13
 - 14
 - 15

16 DATED: May 22, 2008

LAW OFFICES OF DALE K. GALIPO

17
18
19 By:

20 
DALE K. GALIPO

21 Attorneys for Plaintiff NOREEN SALINAS
22
23
24
25
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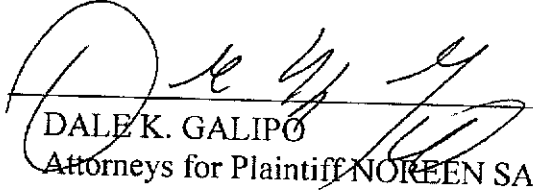
DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as to all of the causes of action above.

DATED: May 22, 2008

LAW OFFICES OF DALE K. GALIPO

By:


DALE K. GALIPO

Attorneys for Plaintiff NOREEN SALINAS

JS 44 Rev. 11/04

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Noreen Salinas

ADR

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Law Offices of Dale K. Galipio
21800 Burbank Blvd., Ste. 310

Woodland, California 91367
(818) 347-3333

DEFENDANTS

City of San Jose, Chief Robert Davis,
Taser International, Inc., and DOES 1 to
10, inclusive

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
OF LAND INVOLVED.

Attorneys (If Known)

C08 02625 RS**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury	PERSONAL INJURY 362 Personal Injury - Med. Malpractice 365 Personal Injury - Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC 881 630 Liquor Laws 640 R.R. & Truck 650 Airline Regs 660 Occupational Safety/Health 690 Other LABOR 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 730 Labor/Mgmt. Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation 791 Empl. Ret. Inc Security Act	422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 840 Trademark SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SS/ID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS - Third Party 26 USC 7609
120 Marine				400 State Reapportionment
130 Miller Act				410 Antitrust
140 Negotiable Instrument				430 Banks and Banking
150 Recovery of Overpayment & Enforcement of Judgment				450 Commerce
151 Medicare Act				460 Deportation
152 Recovery of Defaulted Student Loans (Excl. Veterans)				470 Racketeer Influenced and Corrupt Organizations
153 Recovery of Overpayment of Veteran's Benefits				480 Consumer Credit
160 Stockholders' Suits				490 Cable/Sat TV
190 Other Contract				810 Selective Service
195 Contract Product Liability				850 Securities/Commodities/Exchange
196 Franchise				876 Customer Challenge 12 USC 3410
	CIVIL RIGHTS 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other X 440 Other Civil Rights	PRISONER PETITIONS 510 Motion to Vacate Sentence Habeas Corpus: 530 General 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Condition		890 Other Statutory Actions 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes
REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property				

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C Section 1938; Civil Rights Violations (Wrongful Death, Survival Action, Negligent Hiring, Supervision and Retention, Battery, Conspiracy) and Products Liability

Brief description of cause:

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ To be established/Tria ☒ CHECK YES only if demanded in complaint.
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE

DOCKET NUMBER

DATE

May 22, 2008

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

NDC-JS44

BY FAX